

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF TENNESSEE  
NORTHERN DIVISION  
KNOXVILLE

UNITED STATES OF AMERICA,

Plaintiff,

v.

MARK HAZELWOOD, et al.,

Defendants.

Criminal No. 16-20-ART-HBG

**MINUTE ENTRY ORDER**

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On October 31, 2016, the court held a telephone conference to discuss the jury questionnaire and venire process in this case. Anthony Drumheller, Jennifer Brevorka, and Russel Hardin, Jr. represented Mark Hazelwood. Eli Richardson and Robert Platt represented Scott Wombold. Roger Dickson and Zachary Green represented John Freeman. Joseph Costner and Sarah Smith represented Vicki Borden. James Fleishner and Joseph Oehlers represented John Spiewak. Richard Tennent represented Katy Bibee. Benjamin Vernia and Cullen Wojcik represented Heather Jones. Jonathan Cooper and Sara Copher-Rice represented Karen Mann. Tray Hamilton and David Lewen represented the United States. Lisa Wiesman was the court reporter, and Tammy Dallas was the courtroom deputy. Kathy Keeton and Angela Brush, from the Knoxville Clerk's Office, were also on the call.

The Court posed two questions to the parties. First, the Court asked whether it should send the proposed jury questionnaire—which would be limited to questions designed to determine the impact of pretrial publicity on the prospective juror pool—to actual jurors that

will be called in the venire process for this trial, or to a mere sample of jurors. Second, the Court asked whether 120 is a proper goal for the number of questionnaire responses.

Tray Hamilton responded first, on behalf of the government. He stated that the government believes that the Court should send the questionnaire to a sample pool, not the actual jury pool. Additionally, he suggested that the Court consider sending the questionnaire to more than 120 respondents.

Richard Tennent, counsel for defendant Katy Bibee, agreed with the government. In his view, if the Court sends the questionnaire to the same jury pool it wishes to call for the trial, there might be an unintended consequence: The questionnaire might alert the future jurors to the pretrial publicity and ultimately bias the jurors leading up to the trial, which is still twelve months away. Hamilton agreed with this concern, suggesting that—if the Court sends the questionnaire to the actual jurors—the Court should send the questionnaire closer to trial to mitigate any bias.

However, Tennent and Russel Hardin, counsel for Mark Hazelwood, highlighted a potential problem with waiting to send the questionnaire to the actual jury closer to the trial date: The parties, as well as the Court, need to know of the venue decision sooner, rather than later, to arrange for lodging and transportation, secure the courtroom at the designated courthouse, and otherwise prepare for trial. Thus, the parties said, waiting to decide venue may cause logistical problems down the road.

After hearing from the parties and considering their right to a fair and impartial jury, the Court concluded that it will send the questionnaire to a sample pool of jurors, rather than the actual jurors who will be called in the jury-venire process for this trial. And the Court noted that there is already an established pool of jurors to sample—the Clerk's Office

recently developed a 175-person jury pool for trials scheduled in the next six months. Thus, the Court can send the questionnaire to that entire group, with the goal of receiving at least 120 responses. If the response rate exceeds 120, the Court and the parties will consider all of the responses. If there are fewer than 120 responses, the Clerk's Office will continue corresponding with the pool until there are enough responses.

As for timing, the Court explained that the questionnaire process will take about a month—from sending out the questionnaire to receiving 120, or more, responses. Thus, the Court and the parties will convene in Knoxville on Thursday, December 15, 2016, at 9:30 a.m.—as planned—to discuss and finalize the questionnaire. The Court will send out the questionnaires to the 175-person jury pool in January 2017, to receive all responses by February 2017. After the Court and the parties review the questionnaires, the Court will hear and rule on any renewed motions to transfer venue at that time. All set dates and deadlines regarding the questionnaire process remain in place. *See* R. 102.

This the 31st day of October, 2016.



**Signed By:**

**Amul R. Thapar**

**AT**

**United States District Judge**

TIC: 20 mins.; Covington.